IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6022/2004

BHAGWANA
Vs.
CIVIL JUDGE (SR. DIVISION) & ADDITIONAL CHIEF JUDICIAL MAGISTRATE, KOTPUTLI & ORS.

DATE: 10.10.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Ravi Shankar Sharma for the petitioner.
Mr. Rakesh Bhargava for the respondents.

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The plaintiff-petitioner filed a suit against the defendants-respondent Nos. 2 and 3 in the Court of civil Judge, Kotputli for permanent injunction praying not to interfere in the peaceful possession of the plot in question. After completion of the pleadings issues were framed and the case was fixed for plaintiff's evidence on 13.10.2003. On this date, the Presiding Officer was on leave and the case was further adjourned for plaintiff's evidence. Thereafter also, three opportunities were provided i.e. on 03.12.2003, 07.01.2004 and 20.01.2004, but the same have not been availed by the petitioner and last opportunity was provided by the Civil Court to adduce evidence subject to payment of cost of Rs. 100/-. Neither the petitioner

deposited the cost nor he submitted any ailment certificate in support of his application moved under Section 151 CPC. Thus, the Court below after providing opportunities and having considered the provisions of Order 17 Rule 1 CPC, has closed the evidence of the plaintiff-petitioner vide impugned order 28.07.2004 as the plaintiff is not interested in prosecuting the suit for permanent injunction.

Having heard rival submissions of the respective parties and after carefully going through the order impugned dated 28.07.2004 passed by the Civil Judge (Sr. Division) & Additional Chief Judicial Magistrate, Kotputli, it is not disputed that the plaintiff-petitioner has not availed the opportunities provided by the Court below even on the cost and considering this fact that on 13.10.2003 the Presiding Officer was on leave, even thereafter also three chances were given to the petitioner to adduce his evidence, but neither the petitioner availed the opportunities nor deposited the cost and also not filed any medical certificate in support of his application that the petitioner was unable to attend the Court on account of ailment.

Thus, I find no illegality in the order impugned dated 28.07.2004 passed by the Court below as

the plaintiff-petitioner himself has not availed the opportunities provided to him. As per the conduct of the petitioner, it appears that he does not want to adduce any evidence despite of opportunities provided to him. Hence, the order impugned dated 28.07.2004 passed by the Civil Judge (Sr. Division) & Additional Chief Judicial Magistrate, Kotputli requires no interference by this Court.

Consequently, the writ petition fails and the same is hereby dismissed.

The ex parte interim order dated 02.09.2004 granted by this Court stands rejected. The stay application also stands dismissed.

(K.S. RATHORE),J.

/KKC/